

KENTUCKE GAZETTE,

SATURDAY, FEBRUARY 2, 1788.

A Copy of a letter from the Honorable RICHARD HENRY LEE, Esq. to his Excellency the GOVERNOR.

DEAR SIR, New York, Oct. 16, 1787. I WAS duly honoured with your favor of Sept. 17th, from Philadelphia, which should have been acknowledged long before now, if the nature of the business that it related to had not required time.

The establishment of the new plan of government, in its present form, is a question that involves such immense consequences to the present times and to posterity, that it calls for the deepest attention of the best and wisest friends of their country and of mankind. If it be found good after mature deliberation, adopt it; if wrong, amend it at all events for to say (as many do) that a bad government must be established for fear of anarchy, is really saying that we must kill ourselves for fear of dying. Experience and the actual state of things, shew that there is no difficulty in procuring a general convention. The late one being collected without any obstruction; nor does external war, or internal discord prevent the most cool, collected, full, and fair discussion of this all important subject. If with infinite ease a convention was obtained to prepare a system, why may not another with equal ease be procured to make proper and necessary amendments. Good government is not the work of a short time, or of sudden thought. From Moses to Mohammed the greatest geniuses have been employed on this difficult subject, and yet experience has shewn capital defects in the system produced for the government of mankind.—But since its neither prudent nor easy to make frequent changes in government, and as bad governments have been generally found the most fixed; so it becomes of the last consequence to frame the first establishment upon ground the most inextinguishable, and such as the best theories with experience justify. Not trusting as our new constitution does, and as many approve of doing, to time and future events to correct errors, that both reason and experience in similar cases, point out in the new system. It has hitherto been supposed a fundamental maxim that in governments rightly balanced, the different branches should be unconnected, and that the legislative and executive powers should be separate—in the new constitution, the president and senate are all the executive and two thirds of the legislative power. In some weighty instances (as making all kinds of treaties, which are to be laws of the land) they have the whole legislative and executive powers. They jointly appoint all officers civil and military, and they (the senate) try all impeachments either of their own members, or of the officers appointed by themelves.

Is there not a most formidable combination of power thus created in a few, and can the most critic eye, if a candid one, discover responsibility in this potent corps? Or will any sensible man say, that great power without responsibility can be given to rulers with safety to liberty. It is most clear that the parasite of impeachment is nothing to them or any of them—is little restraint is to be found, I presume from the fear of offending constituents. The president is for four years duration and Virginia (for example) has one vote of thirteen in the choice of him, and this thirteen vote not of the people, but electors, two removes from the people. The senate is a body of six years duration and as in the choice of president, the largest state has but a single vote, so is it in the choice of senators.—His attachment is added to shew that responsibility is as little to be apprehended from amenability to constituents, as from the terror of impeachment. You are therefore, sir, well warranted in saying either anarchy or aristocracy will be generated, perhaps the most grievous system of government may arise. It cannot be denied with truth that this new constitution is, in its first principles highly and dangerously oligarchic, and its a point agreed that a government of the few, is of all governments the worst. The only check to be found in favour of the democratic principle in this system is, the house of representatives; which I believe may justly be called a mixed bag of representation. It being obvious to the least examination that smallness of number and great comparative disparity of power, renders that house of little effect to promote good, or refrain bad government. But what is the power given to this ill constructed body? To judge of what may be

for the general welfare, and such judgments when made the acts of Congress become the supreme laws of the land. This seems a power co-extensive with every possible object of human legislation. Yet there is no restraint in form of a bill of rights, to secure (what doctor Blackstone calls) that residuum of human rights, which is not intended to be given up to society, and which indeed is not necessary to be given for any good social purpose.

The rights of conscience, the freedom of the press, and the trial by jury are at mercy. It is there stated that in criminal cases, the trial shall be by jury, but how! In the state what then becomes of the jury of the vicinage or at least from the county in the first instance, for the states being from 50 to 700 miles in extent. This mode of trial even in criminal cases may be greatly impaired, and in civil cases the inference is strong that it may be altogether omitted as the constitution positively assumes it in criminal and is silent about it in civil cases. Nay it is more strongly discountenanced in civil cases by giving the supreme court in appeals, jurisdiction both as to law and fact—Judge Blackstone in his learned commentaries, art. Jury trials, says, it is the most transcendent privilege which any subject can enjoy or wish for, that he cannot be affected either in his property, his liberty, his person, but by the unanimous consent of 12 of his neighbours and equals. A constitution that I may venture to affirm has under providence, secured the just liberties of this nation for a long succession of ages. The impartial administration of justice, which secures both our persons and our properties, is the greatest of civil society. But if that be entirely entrusted to the magistracy, a select body of men, and those generally selected by the princes or such as enjoy the highest offices in the state, these decisions in spite of their own natural integrity, will have frequently an involuntary bias towards those of their own rank and dignity. It is not to be expected from human nature, that the few should always be attentive to the good of the many. The learned judge further says, that every tribunal selected for the decision of facts is a step towards establishing aristocracy; the most oppressive of all governments. The answer to these objections is, that the new legislature may provide remedies! But as they may, so they may not, and if they did, a succeeding assembly may repeal the provisions. The evil is found resting upon constitutional bottom, and the remedy upon the mutable ground of legislation, revocable at any annual meeting. It is the more unfortunate that this great security of human right, the trial by jury, should be weakened in the system, as power is unnecessarily given in the second section of the third article, to call people from their own country in all cases of controversy about property between citizens of different states and foreigners with citizens of the United States, to be tried in a distant court where the Congress may sit. For although inferior congressional courts may for the above purposes be instituted in the different states, yet this is a matter altogether in the pleasure of the new legislature, so that if they please not to institute them, or if they do not regulate the right of appeal reasonably, the people will be exposed to endless oppression, and the necessity of submitting in multitudes of cases, to pay unjust demands, rather than follow suitors, through great expense, to far distant tribunals and to be determined upon there, as it may be without a jury. In this congressional legislature a bare majority of votes can enact commercial laws, so that the representatives of the seven northern states, as they will have a majority can by law create the most oppressive monopoly upon the five southern states whose circumstances and productions are essentially different from theirs, although not a single man of these votes are the representatives of, or amenable to the people of the southern states. Can such a set of men be, with the least color of truth called a representative of those they make laws for? It is supposed that the policy of the northern states will prevent such abuses. But how feeble, sir, is policy when opposed to interest among trading people! And what is the restraint arising from policy? Why that we may be forced by a bubble to become ship builders!—But how long will it be before a people of agriculture can produce ships sufficient to export such bulky commodities as ours and of such extent; and if we had

the ships, from whence are the seamen to come? 4000 of whom at least in Virginia. In questions so liable to abuse, why was not the necessary vote put to two thirds of the members of the legislature? With the constitution came from the convention, so many members of that body to congress, and of those too, who were among the most fiery zealots for their system, that the votes of three states being of them, two states divided by them, and many others mixed with them, it is easy to see that congress could have little opinion upon the subject. Some denied our right to make amendments, whilst others more moderate agreed to the right, but denied the expediency of amending but it was plain that a majority was ready to send it on in terms of approbation—my judgment and conscience forbid the last, and therefore I moved the amendments that I have the honor to send you inclosed herewith, and demanded the yeas and nays that they might appear on the journals. This seemed to alarm and to prevent such appearance on the journal was agreed to transmit the constitution with out a syllable of approbation or disapprobation; so that the term unanimously only applies to the transmission, as you will observe by attending to the terms of the resolve for transmitting. Upon the whole, sir, my opinion is, that as this constitution abounds with useful regulations, at the same time that it is liable to strong and fundamental objections, the plan for us to pursue, will be to propose the necessary amendments, and express our willingness to adopt it with the amendments, and to suggest the calling of a new convention for the purpose of considering them. To this I feel no well founded objection, but great safety and much good to be the probable result. I am perfectly satisfied that you make such use of this letter as you shall think to be for the public good; and now after begging your pardon for so great a trespass on your patience and presenting my best respects to your lady, I will conclude with assuring you, that I am, with the sincerest esteem and regard, dear sir, your most affectionate and obedient servant.

RICHARD HENRY LEE.

POSTSCRIPT

IT having been found from universal experience that the most express declarations and reservations are necessary to protect the just rights and liberty of mankind from the silent, powerful, and ever active conspiracy of those who govern, and it appearing to be the sense of the good people of America by the various bills or declarations of rights wherein the government of the greater number of the states are founded, that such precautions are necessary to restrain and regulate the exercise of the great powers given to rulers: In conformity with these principles and from respect for the public sentiment on this subject, it is submitted, That the new constitution proposed for the government of the United States be bottomed upon a declaration or bill of rights, clearly and precisely stating the principles upon which this social compact is founded, to wit: That the rights of conscience in matters of religion shall not be violated.—That the freedom of the press shall be secured.—That the trial by jury in criminal and civil cases, and the modes prescribed by the common law for the safety of life in criminal prosecutions shall be held sacred.—That standing armies in times of peace are dangerous to liberty, and ought not to be permitted unless assented to by two thirds of the members composing each house of the legislature under the new constitution.—That elections should be free and frequent.—That the right administration of justice should be secured by the independency of the judges.—That excessive bail, excessive fines, or cruel and unusual punishments should not be demanded or inflicted.—That the right of the people to assemble peaceably for the purpose of petitioning the legislature shall not be prevented.—That the citizens shall not be exposed to unreasonable searches, seizure of their persons, houses, papers, or property, and as it is necessary for the good of society, that the administration of government be conducted with all possible maturity of judgment, for which reason it hath been the practice of civilized nations and so determined by every state in the Union; that a council of state, or privy council should be appointed to advise and assist

in the arduous business assigned to the executive power. Therefore let the new constitution be amended, as to admit the appointment of a privy council to consist of eleven members chosen by the president but responsible for the advice they may give. For which purpose the advice given shall be entered in a council book and signed by the giver in all affairs of great moment and that the councillors act under, an oath of office. In order to prevent the dangerous blending of the legislative and executive powers and to secure responsibility, the privy, and not the senate, shall be joined with the president in the appointment of all officers civil and military under the new constitution. That the constitution be so altered as not to admit the creation of a vice president, when duties as assigned may be discharged by the privy council, except in the instance of proceeding in the senate, which may be supplied by a speaker chosen from the body of the senators by themselves as usual, that so may be avoided the establishment of a great officer of state, who is sometimes to be joined with the legislature, and sometimes to administer the government, rendering responsibility difficult, besides giving unjust and needless pre-eminence to that state from whence this officer may come. That such parts of the new constitution be amended as provide imperfectly for the trial of criminals by a jury of their vicinage, and to supply the omission of a jury trial in civil causes or disputes about property between individuals whereby the common law is directed, and as generally it is secured by the several state constitutions. That such parts of the new constitution be amended as permit the vexatious and oppressive calling of citizens from their own country, in all controversies concerning property between citizens of different states and between citizens and foreigners to be tried in a far distant court, and as it may be without a jury, whereby in a multitude of cases, the circumstances of distances and expence, may compel numbers to submit to the most unjust and ill founded demands. That in order to secure the rights of the people more effectually from violation, the power and respectability of the house of representatives be increased, by increasing the number of delegates to that house, where the popular interest must chiefly depend for protection. That the constitution be so amended as to increase the number of votes necessary to determine questions in cases where a bare majority may be seduced by strong motives of interest to injure and oppress the minority of the community, as in commercial regulations where advantage may be taken of circumstances to ordain rigid and premeditated laws that will in effect amount to oppressive monopolies, to the great impoverishment of those states whose peculiar situations expose them to such injuries.

January 16, 1788.

Sir,
WHEN your press first opened in this district, I had great hopes that our Politicians would immediately have entered into the discussion of the important and interesting question, whether a separation ought to take place? hoping that some of us might have been thereby enabled to form a judgment, and give some advice on the occasion, to our members of Convention: but I fear what we farmers suspect is too true, namely, THAT OUR GREATEST POLITICIANS ARE NOT TRUE PATRIOTS:—when we wish them to answer our doubts respecting matters of the greatest moment to us, they set to quarrelling & abusing one another like a parcel of old women:—we must now submit to the separation right or wrong: but woe of us would have been better satisfied had they but told us the reason why such a measure was necessary—as we plow the ground from whence they get their bread I think it is as little as they can do to give us all the information, their pens and your press can afford, if it was merry to keep us in good humour.

It becomes now our duty to make the best we can of the intended separation. The next step to be taken is the framing a new CONSTITUTION which is of the greatest importance to posterity, and ought if possible to please as well as be profitable to us all; and I have been wishing to hear the opinions of gentlemen on several particulars which have been the subject of debate in some companies where I have been—some of which are as follows, to wit.

1. Ought not the Constitution to have a clause declaring itself superior and permanent to any Law or act of Assembly that shall be made contrary to it.
2. Ought it not to have a clause declaring religious freedom, and forbidding the Legislature to meddle in religious matters?
3. Ought it to have a clause respecting Slavery? and what ought that clause to be?

4. Ought preachers to be allowed a seat in the Legislature? and ought they to bear arms?
 5. Ought Clerks of Courts to be allowed a seat in the Legislature?
 6. Ought Surveyors to be allowed a seat in the Legislature?
 7. Ought practicing Attorneys' whose fees are established by law, to be allowed a seat in the Legislature?
 8. Ought there to be more than one Branch of the Legislature? and why?
 9. How ought County Court Justices to be appointed?
 10. How ought Militia officers to be appointed?
- I hope our Gentlemen politicians will oblige the public with their sentiments on these subjects before the Constitution is framed—I think the discussion of such weighty matters worth their trouble, and I think it is their duty. Perhaps some of my calling may have seats in the next Convention; and unless those subjects are discussed and weighed beforehand, it cannot be expected (in the few days the Convention will be sitting to frame the constitution) that a judicious opinion can be given by

A FARMER.

FOR SALE

ON THE LOWEST TERMS FOR
 Cash, or work-horses.

The following tracts of land the property of Thomas Bedford, to wit, fifteen hundred acres of land in Bourbon county, on or near, the Ohio river, the quality and situation, may be known by applying to Mr. William Kennedy, living near Danville, who located and surveyed the same.

Also five hundred acres, in the name of John Pemberton, lying in Nelson county, on Ashers creek a branch of salt river, the land may be seen by applying to Mr. William Smiley living near the mouth of said creek or the quality known by applying to Col. Isaac Cox, who surveyed the same. For terms apply to

WILLIAM HENRY.

agent for Thomas Bedford.

Credit will be given until the tenth of april next.

THE public should be cautious how they deal with a certain capt. John Martin of Lincoln county, as that man has lately taken advantage of the law in pleading the limitation act, and that only, because he has been indulged nearly three years. This I hope will be a sufficient warning to the citizens of Kentucke particularly those in business.

Danville, Dec. 4. 1787. 29 M. NAGLE.
 N. B. He says I owe him, let him produce his account proved, and then I will give him a credit on the execution I have against him. M. N.

ALL persons indebted to the subscriber, are desired to settle and pay up their respective balances, on or before the 1st day of March next: those who fail may depend that I shall take the shortest method of getting my own. All those who may stand in need of my assistance in future will be careful to make provision to settle with me before I leave their houses MARY HARPER.

Whereas a number of the subscribers for this paper, have paid no part of the subscription money, they are hereby requested to do it shortly, as there are several demands against us which we are not able otherwise to discharge. Good wheat at 2s. per bushel or Ind. an. corn at 6s. per barrel will be received in payment, on or before the 12, of February next.

WANTED

AN APPRENTICE TO THE HATTING BUSINESS.

Enquire of the printer hereof.

JUST OPENED

AND FOR SALE ON THE MOST REASONABLE TERMS FOR CASH, BY

ALEXANDER AND JAMES PARKER,

at their store in Lexington opposite Brays Tavern, an assortment of dry goods, amongst which is an assortment of Queens ware, Groceries and hardware

ROBERT BARR

HAS just received a fresh assortment of grocery and dye stuffs, and has opened the remaining stock of his dry goods, and now are for sale, likewise two Philadelphia made stills two mill saws, four ditch rifle guns and a number of Cows and calves, with the following Medicine, viz. Glauber salts, Bala, rhubarb, jallap, tartar emetic, cream of tartar ippecacuan, magnesia, camphor, flower of sulphur, quacksilver ointment, bluish oil, harlem oil, turlingtons Balsam, andersons pills, hoopers female pills essence of pepper mint, liquorish ball &c. Also, two surveyors compasses and chains, together with a case of plotting instruments: at eight pounds each compass.

As I propose quitting trade as soon as this cargo of merchandise is vended, shall in future sell on the lowest terms to expedite the same, super fine broad cloths with other fine goods will be sold on lower terms than this district can in future be supplied R. B.

Whereas I passed my bond with Mr. John

South security, to a Samuel Ewing some years past, for four hundred acres of land, and as I have paid off said bond to said Ewing, and taken his receipt against the same: I hereby forewarn all persons from taking any assignment thereof, as am determined not to pay it. Also an order to said Ewing, on a Mr. Gubbs, for two young negroes, or of any other writing obligatory whatever, as the said Ewing failed in his engagements to me made in consequence thereof. 25 WILLIAM HOY.

January 19, 1788.

THE Public are cautioned against purchasing a tract of five hundred acres of land lying on Licking creek or the waters thereof, near Col. Garrards, of Messrs. Gordon and Coburn until a settlement takes place between them and myself, respecting said lands, two thirds thereof being my property. 25 WILLIAM HOY.

January 19 1788

THE public are hereby informed that as there never was any species of connection between William Hoy and the subscribers no settlement between them can affect the title to the above tract of land and they may rest assured that he has no claim to the above tract that can be supported either at Law or in Equity.

Jan. 24.

GORDON & COBURN.

LEXINGTON GRAMMAR SCHOOL.

IS again opened, where Latin, Greek and the different branches of science will be carefully taught by Isaac Wilson, formerly professor in Philadelphia college. The price of tuition is four pounds payable in cash or produce, boarding may be had on as reasonable terms as any in the district.